



EPA-IPAA Meeting – March 7, 2018

OBJECTIVE: A predictable, cost effective regulatory system. Include a significant state delegation initiative. Have a federal enforcement process that treats industry with fairness, respect and dignity – eliminate the use of excessive threatening tactics, egregious fine proposals and using enforcement to compel regulation where EPA has no authority.

Specific Issues:

Air Regulations – Oil and Natural Gas Production

Develop a federal air regulation component that is Volatile Organic Compound (VOC) based, adequate to protect against an aggressive effort to federalize oil and natural gas production regulation. Define low production wells and assure that any federal regulation is specifically analyzed for them; exclude where feasible. Assure that federal technology determinations are based on analyses that are designed for assessing regulations and are scientifically sound; use federal resources for analyses.

NSPS: Subparts OOOO and OOOOa – Support reconsidering current regulations and revising as VOC requirements; revising fugitive emissions requirements relying on state programs; excluding low production wells; defining a low production well subcategory and reserving it for future use if any.

Existing Sources – Support withdrawal of the October 2016 existing source Control Techniques Guidelines (CTG) for Ozone NAAQS Nonattainment Areas. Reconsider if further research demonstrates a need for existing source controls; require RACT determination to be based on existing sources, not applying NSPS requirements. Exclude low producing wells or create separate requirements based on low producing well economics. (NSPS VOC Subpart OOOO/OOOOa eliminates path for nationwide existing source rule.)

Ozone NAAQS Reconsideration – Support reconsideration of the 70 ppb Ozone NAAQS. It pulls areas that include oil and natural gas production into nonattainment despite EPA determination that those areas would meet 70 ppb without local controls; consequence is new source offset requirements that thwart development without environmental benefit. Reconsideration needs to look at whether 70 ppb NAAQS provides real health benefits since EPA estimates that key population areas that fail to meet the 75 ppb NAAQS will fail to meet the 70 ppb revision.

Resource Conservation and Recovery Act

Subtitle D Consent Decree – EPA agreed to a Consent Decree to settle litigation regarding mandatory duties under RCRA Subtitle D related to making determinations regarding the appropriateness of state oil and natural gas production wastes regulations. EPA has until March 2019 to respond but it should act quickly for two reasons. First, EPA's mandate to act does not require an extensive burden and the longer it takes to act, the more state programs appear to be viewed as inadequate. Second, the mandatory duties require action every three years. Urge action to determine that no guidelines are needed and a reaffirmation of that decision in 2020.

(continued on reverse)

INDEPENDENT PETROLEUM
ASSOCIATION OF AMERICA

1201 15TH STREET, NW
SUITE 300
WASHINGTON, DC 20005

P (202) 857-4722
F (202) 857-4799

www.ipaa.org



Clean Water Act

Unconventional Oil and Gas (UOG) Extraction Effluent Limitations Guidelines (ELG) –

Working with EPA to develop a study to address technology to manage production waste water treatment at Publicly Owned Treatment Works (POTW). EPA finalized UOG Extraction ELG for discharges to POTW in June 2016. These ELG should be based on a technology standard – Best Available Technology Economically Achievable (BATEA). EPA concluded that all discharges to POTW should be prohibited based on the availability of underground injection wells and of recycling options. Neither of these are BATEA. EPA should not be making zero discharge determinations based on its perception of other options. It should determine BATEA requirements. The zero discharge decision can harm conventional producers because of the definitions in the ELG, limited water usage options, and setting a standard that will be hard to reject in Centralized Waste Treatment (CWT) ELG development in the future.

WOTUS – Support EPA action to narrow the scope of Waters of the United States (WOTUS). Many oil and natural gas production operations are in arid regions and a WOTUS interpretation that captures these areas in inappropriate adversely affecting development (Section 404 permits) and SPCC Plans.

Ground Water and the Clean Water Act – Concerned about the potential for bringing ground water into the scope of the Clean Water Act would be counter to the management of ground water under the Safe Drinking Water Act. It could result in a significant new regulatory burden that was never intended when either Act was passed.

State Delegation

Federalizing Oil and Natural Gas Production Regulations – From 2009 through 2016, federal agencies aggressively acted to expand the scope of regulation to provide pathways for federal action in spite of state regulations. Support EPA actions to expand and enhance delegation of regulatory authority to states. IPAA is looking for options to be helpful in identifying pathways, working with its state cooperating associations to encourage state actions and working with Congress if there are barriers that need to be addressed. Expanded delegation will require adequate federal funding of states expanding their regulatory efforts. Separately, IPAA support oversight of delegated states to assure that they are not abusing their authority such as the misuse of Clean Water Act Section 401 to deny pipeline permits crossing rivers.

Enforcement Tactics – IPAA supports the recently launched EPA initiative to work with states and other stakeholders on compliance assurance. Over the past several years, EPA's Enforcement tactics have been excessively aggressive. For example, in North Dakota where the state did not have delegation of the NSPS program for oil and natural gas production, EPA Enforcement initiated direct actions against producers with regard to its interpretation of Subpart OOOO requirements for storage vessels. This interpretation differed from those EPA technical staff had initially indicated. Using its enforcement power, EPA filed proposed penalties against a privately held producer that exceeded the value of its assets. The purpose was clear and predictable. EPA wanted to use its enforcement power to compel a limited asset company to enter into a consent agreement that would require actions that met Enforcement's interpretation of the regulation and to commit to additional actions that were beyond EPA Clean Air Act authority to require. Not only did EPA use a gap in state delegation to step over North Dakota in its zeal, but these types of enforcement tactics reflect poorly on EPA and the federal government and should be ended.

QUESTIONS? Contact **Sam McDonald** at smcdonald@ipaa.org or (202) 857-4722.